



**COMMISSION ON LABOR  
REGULAR MEETING**

**Wednesday, March 15, 2023  
7:00 PM**

2939 Ellis Street, South Berkeley Senior Center, Multi-Purpose Room

**AGENDA**

**Roll Call**

**Public Comment on Non-Agenda Matters**

**Minutes for Approval**

*Draft minutes for the Commissions consideration and approval.*

- 1. Minutes of January 25, 2023 Regular Meeting**  
**From: Commission Secretary**  
**Recommendation:** Approve the draft minutes of the January 25, 2023 regular meeting.

**Chairperson's Report:** *The Commission Chair may make announcements or provide information to the Commission in the form of an oral report. The Commission will not take action on such items but may request the items be placed on a future agenda for discussion.*

**Commission Action Items**

*The public may comment on each item listed on the agenda for action as the item is taken up.*

- 2. 2023 Nominations and Elections for Chair and Vice Chair**  
**Recommendation:** Nominate and elect Commissioners for Chair and Vice Chair of the Commission on Labor.
- 3. Send a letter to Council about long time vacancies for the Commission on Labor**  
**Recommendation:** Approve writing a letter to Council asking them to fill vacancies for the Commission on Labor.

**4. Support the Labor Peace Ordinance in the Marina Zone**

**Recommendation:** Authorize a representative from the Commission on Labor to speak in support of the ordinance during the public comment period at the March 21<sup>st</sup> City Council meeting.

**Presentations** *(for information only, no final action taken)*

**None**

**Committee Updates**

**None**

**Information Items:** *All items for discussion only and no final action.*

5. **FY2024 Workplan**  
**From: Chair Berne**

**Items for Future Agendas**

*These items are not scheduled for discussion or action at this meeting. The Commission may schedule these items to the Action Calendar of a future Commission meeting*

- **Discussion of items to be added to future agendas**

**Adjournment**

**Attachments:**

1. Draft Minutes of January 25, 2023 Regular Meeting
2. Election of Officers - Commissioners-Manual
3. Cover letter Labor Peace Ordinance in the Marina Zone
4. Labor Peace Ordinance city version 2023-03-06
5. Marina Labor Peace Ordinance
6. Work Plan - Commissioners-Manual
7. Commission on Labor Enabling Legislation BMC CHAPTER 3.62
8. FY2023 Commission on Labor Work Plan
9. Council Informational Report Template

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This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to **Joshua Oehler, Secretary, (510) 981-5408 [JOehler@cityofberkeley.info](mailto:JOehler@cityofberkeley.info)**.

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: E-mail addresses, names, addresses, and other contact information are not required but, if included in any communication to a City board, commission, or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission, or committee for further information.

Written material may be viewed in advance of the meeting at the Housing & Community Services Department, 2180 Milvia, 2nd Floor, during regular business hours or at the Berkeley Public Library, Shattuck/Kittredge Streets, during regular library hours at the Reference Desk. The Commission Agenda and Minutes may be viewed on the City of Berkeley website: <https://berkeleyca.gov/your-government/boards-commissions/commission-labor>.



**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair-accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

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I hereby certify that the agenda for this regular/special meeting of the Berkeley City Commission on Commissions was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, at the location of the meeting, South Berkeley Senior Center, as well as on the City's website, on **March 9, 2023**.

**SECRETARY SIGNATURE**

Joshua Oehler March 9, 2023

**Secretary:**

Joshua Oehler  
Health, Housing & Community Services  
Department  
(510) 981-5408  
E-mail: [JOehler@cityofberkeley.info](mailto:JOehler@cityofberkeley.info)

**Mailing Address:**

Commission on Labor  
Joshua Oehler, Secretary  
2180 Milvia, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

**Communications**

None



Health Housing and Community Services Department  
Housing & Community Services Division  
**Commission on Labor**

**COMMISSION ON LABOR  
REGULAR MEETING**

Wednesday, January 25, 2023

7:08 PM

On-Line and Teleconference (No Physical Location)

**DRAFT MINUTES**

**Preliminary Matters**

**1. Roll Call**

Present: Berne, Bowen, Jones, Katz, Osborne, Scantlebury.

Absent: None

Staff Present: Joshua Oehler

Members of the Public: 1

**2. Public Comments**

1 Speaker

**3. Approval of Draft November 30, 2022 Special Meeting Minutes**

Action: M/S/C (Katz/Scantlebury) to approve the November 30, 2022 Special Meeting Minutes

Vote: Ayes: Berne, Katz, Osborne, Scantlebury. Noes: None. Abstentions: Jones and Bowen. Absent: None.

**Action Items**

None

**Adjournment**

Action: M/S/C (Osborne/Jones) to adjourn the meeting at 8:43 PM

Approved: \_\_\_\_\_, Joshua Oehler, Secretary

**3) Incompatible Public Offices**

The common law doctrine of incompatible public offices prohibits a public official from occupying two public offices that are incompatible in terms of their duties and/or the likelihood of divided loyalties. However, in Berkeley, serving on two or more City boards or commissions, including quasi-judicial bodies, is permitted (BMC Chapter 3.80). A commissioner who already occupies an elected or appointed office other than a City board or commission and wants to apply for appointment to a City commission should seek the City Attorney's advice as to whether the two offices may be deemed incompatible.

**4) Incompatible Activities for Compensation**

Government Code Section 1126 prohibits a public official from engaging in activities for compensation that are incompatible with his or her public office. A commissioner engaged in compensated activities that may be incompatible with his or her duties as a commissioner should consult the City Attorney.

**5) State-Mandated Ethics Training**

State law (AB 1234) requires certain local agency officials to receive training in ethics. In Berkeley, the officials identified for requirement are Mayor and City Council, City Auditor, Rent Stabilization Board Commissioners, Board of Library Trustees, and Police Review Commissioners.

These officials will receive a notice from the City Clerk advising them of the required training. The training may be completed on the FPCC website. The training must be completed within one year of the date of appointment and every two years thereafter. A certification of completion must be filed with the City Clerk. For more information, please contact the City Clerk Department.

**F. COMMISSION ORGANIZATION****1) Election of Officers and Terms of Office**

Unless otherwise provided by ordinance,<sup>2</sup> the chair and vice-chair are elected by the majority of the commission for a one-year term and hold office until their successors are elected or until their terms as members of the commission expire. No commissioner shall serve as chair for more than two consecutive years. There is no term limit for vice-chair.

Unless otherwise provided for in the enabling legislation, the annual election of commission officers should occur during the month of February. The election of officers must be listed as an item on the agenda.

Two meetings prior to the meeting at which officers will be elected, commissions are encouraged to list as an agenda item a discussion of the election, to inform all commissioners of the opportunity to seek nomination and election for the offices of chair and vice chair, to discuss and agree to the nomination process and timing for nominations (if no policy has been enacted by the commission), and to add clarity for commissioners and the

<sup>2</sup> Election of officers to the Police Review Commission, Board of Library Trustees, and Landmarks Preservation Commission are regulated by BMC Sections 3.32.050, 3.04.040, and 3.24.030, respectively.

public. In order to facilitate an orderly and fair nomination process, commissions may open nominations at the January meeting (or the meeting prior to the February meeting) and then hold the vote on officers at the February meeting. A Commission may enact a policy on officer elections in conformance with the requirements stated below, specifying the timing for nominations, the order in which nominations will be voted upon, and any other details that support a fair, orderly and transparent process for election of officers.

If there are multiple nominees for chair or vice-chair, the commission may wish to use a process by which all nominations can be made prior to voting. Full discussion of nominations is recommended, including the ability of nominees to speak on behalf of their own candidacy.

Additional regulations for officer elections:

- Nominations for chair and vice-chair require a motion (with second).
- A commissioner may nominate himself or herself.
- Any member of the commission, regardless of length of tenure on the commission may be elected chair or vice-chair.
- There is no automatic succession from vice-chair to chair.
- Motions to nominate must be voted on in the public forum, and no secret ballots are allowed.
- A roll call vote is recommended for votes on commission officers, and is required if any commissioner requests a roll call vote.
- The results of the vote must be publicly announced and the vote recorded in the minutes (Resolution No. 60,531-N.S.).
- A commissioner may not be elected chair if he or she will not be able to finish the term due to the two-year limitation.

Terms of office for officers are determined by the date the election regularly occurs, not by the date it may have actually occurred. If there is a slight variation in the date of the election, the sitting chair may serve on an interim basis provided that they do not exceed the two-year limit.

Scenario:

The chair is elected in February 2016. The chair resigns in April 2016. A new chair is elected in May 2016. The newly elected chair will serve from May 2016 to February 2017, when the next regular election is held.

**2) Mandatory Annual Training for Chairs and Vice-Chairs**

Chairs and vice-chairs are required to complete mandatory annual training. Resolution No. 63,876-N.S. was adopted by the City Council to implement video training for commission officers to satisfy the requirements of Resolution No. 60,531-N.S.

The chair and vice-chair must view, in its entirety, a training video on commission procedures and legal requirements. Upon completion, the chair and vice-chair must file with the City Clerk an Affirmation of Completion.

This training video must be viewed and the Affirmation of Completion must be filed with the City Clerk no later than 60 calendar days from the date of election as chair or vice-chair. Failure to complete the video training and file the Affirmation of Completion within 60 days of election will result in the immediate forfeiture of the position of chair or vice-chair.

Commission officers must file an Affirmation of Completion within 60 days from the date of election or forfeit their seat as chair or vice-chair.

While not mandatory for commissioners other than the chair and vice-chair, completion of this training is encouraged for all commissioners.

The required training video may be viewed online through the city website - <https://www.cityofberkeley.info/commissions/> or a DVD may be obtained from the City Clerk Department at 2180 Milvia Street, 1<sup>st</sup> Floor. The City Clerk also offers a video terminal at its office for commissioners to view the training video.

### 3) **Duties of Officers**

The “presiding officer” (chair or, in his or her absence, the vice-chair), performs the following duties.

- Presides at all meetings of the commission and ensures that the work of the commission is accomplished. To this end, the chair must exert sufficient control of the meeting to eliminate irrelevant, repetitious, or otherwise unproductive discussion. At the same time, the chair must ensure that all viewpoints are heard and are considered in a fair and impartial manner.
- Ensures that commission bylaws, if any, and procedures are followed. The chair cannot make rules related to the conduct of meetings; only the full commission may do so.
- Appoints commissioners to temporary subcommittees subject to the approval of the full commission.
- Approves the agenda prior to distribution. This is limited to the structure and order of the agenda and does not grant the chair the authority to remove an item submitted by commissioners or staff if submitted by the established deadline.
- Signs correspondence on behalf of the commission.
- Represents the commission before the City Council. Other commissioners may be the representative with the formal approval of the commission by motion and vote.
- Approves commission reports to Council. The chair cannot modify content that was approved by the full commission.
- The chair or a quorum of the commission may call a special meeting.
- The chair and vice-chair have full rights to vote and to make or second motions.

**4) Transfer of Chair**

In the absence of the chair or his or her inability to act, the vice-chair presides in place of the chair, but does not assume the office of chair. In the event of the absence or the inability to act of both the chair and the vice-chair, the remaining commissioners elect one of their members to act as temporary chair.

If a chair is terminated from the commission for any reason, or resigns, the office is vacated, and a new election for chair must be held to fill the office. The vice-chair does not assume the office of chair, rather they preside over the meetings and execute the chair's duties as the vice-chair. If a vice-chair is terminated, the office is vacated, and a new election would be held to fill the office. If an officer is terminated and subsequently reappointed to the commission, he or she shall not resume the office and must be reelected to the office by the majority of the membership.

In the event a chair leaves the commission prior to the end of his or her term, the vice-chair performs the duties of chair but does not assume the office of chair. An election must be agendized and a new chair must be elected at a subsequent meeting. The vice-chair may be elected as chair, as may any other commissioner, but the commission must vote on the election.

**5) Temporary Subcommittees/Ad Hoc Subcommittees**

From time to time, the commission or the chair, with the confirmation of the commission, may appoint several of its members, but fewer than a quorum of the present body, to serve as a temporary subcommittee. Commissions are limited to the creation of ad hoc single purpose subcommittees. Ad hoc subcommittees are treated as if they are legislative bodies under City policy and, as such, are required to comply with the requirements in the Brown Act.

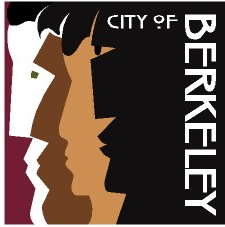


Ad hoc subcommittees are defined by all of the following characteristics.

- Composed of less than a quorum of the parent body.
- Composed of only members of the parent body (no members of other commissions or any other persons may be included).
- Have a finite purview established by the parent body.
- Have a set target date to report back to the parent body.
- Terminate within one year, unless the parent body reviews and extends the timeline.
- Have no regular meeting schedule set by the parent body (all subcommittee meetings are "special meetings").
- Have no alternate commissioner assigned to attend meetings, even as an observer, if his or her presence would create a quorum of the parent body.

Subcommittees are advisory only to their parent commission, not to Council. Subcommittees are tasked with the study of a specific issue and with making a recommendation to their parent commission. The parent commission has the opportunity for input when the subcommittee reports





Kate Harrison  
Councilmember, District 4

## REVISED AGENDA MATERIAL

**Meeting Date:** March 6, 2023

**Item Number:** 31

**Item Description:** **Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code to Establish a Labor Peace Policy Minimizing Labor/Management Conflict in Berkeley Marina Zone**

**Submitted by:** Councilmember Harrison

- Updated transmittal to add Councilmembers Taplin and Bartlett as co-sponsors and to provide additional background information about the scope of labor peace agreements in other jurisdictions such as the SFO Airport Commission.
- In consultation with the City Attorney, updated the Ordinance Section 2.102.040 B. to specify the procedures for an Employer appealing to the City Council (consistent with BMC zoning code procedures).
- In consultation with the City Attorney, updated Section 2.102.040 A.(2)(i) to include language regarding the an “exchange for good and valuable consideration” consistent with BART’s Labor Peace policy.

ORDINANCE NO. -N.S.

ADDING CHAPTER 2.102 TO THE BERKELEY MUNICIPAL CODE  
TO ESTABLISH A LABOR PEACE POLICY MINIMIZING LABOR/MANAGEMENT  
CONFLICT IN BERKELEY MARINA ZONE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Chapter 2.102 of the Berkeley Municipal Code is added to read as follows:

**Chapter 2.102**

**LABOR PEACE POLICY - MINIMIZING LABOR-MANAGEMENT CONFLICT IN  
BERKELEY MARINA ZONE**

**Sections:**

**2.102.010 Findings and Purpose.**

**2.102.020 Definitions.**

**2.102.030 City of Berkeley—Labor Peace Policy**

**2.102.040 Procedures to Minimize Disruption Caused by Labor/Management  
Conflict.**

**2.102.050 Applicability and Exemptions.**

**2.102.060 Prospective Effect.**

**2.102.070 Preemption.**

**2.102.080 Severability.**

### **2.102.010 Findings and Purpose.**

The Council of the City of Berkeley finds and declares as follows:

- A. Berkeley is a world-class tourist destination, welcoming more than a million visitors annually. The City of Berkeley holds in trust pursuant to the Public Trust Tidelands grant from the State of California property along and near the City's waterfront known as the Berkeley Marina Zone, a major tourist hub and destination. The City leases its real property along and near the Marina Zone facilities to Hospitality Operation companies, and in so doing faces the same risks and liabilities as private businesses participating in management of similar facilities. As a result, the City has an ongoing Proprietary Interest in the management and use of that Marina real property and harbor facilities and must make prudent business decisions, as would any private business, to ensure efficient and cost-effective management of its business concerns, and to maximize benefit and minimize risk.
- B. This Chapter is intended to maximize the returns and minimize the risk to the City's Proprietary Interest resulting from possible conflict between Employers leasing, and operating Hospitality Operations on City property, and Labor Organizations, arising out of union organizing campaigns, labor negotiations, and disruption that may be caused by such conflict. Experience of public entities and private employers demonstrates that union organizing drives and union efforts to secure representation rights and an initial collective bargaining agreement can deteriorate into protracted and acrimonious conflict. Such conflict threatens the City's Proprietary Interest when private employers enter into leases to use City property, and labor conflict could jeopardize base rent payments or rent payments calculated on a percentage of sales. That threat is most acute during the period when a Labor Organization (1) seeks to gain recognition as the collective bargaining representative for Employees and (2) if recognized, seeks a First Contract with the Employer.
- C. The sole purpose of this Chapter is to protect the City's Proprietary Interest in the Hospitality Operation Leases. This Chapter does not favor any particular procedure for determining employee preference, or lack of preference, regarding Labor Organization representation, or the outcome of any such procedure; skew such procedures to favor or hinder any party; interfere with the negotiation, terms, or scope of a First Contract, if applicable; or express or implement any generally applicable policy regarding private sector labor/management relations, or regulate those relations in any way.

### **2.102.020 Definitions.**

"Demand for Recognition Period" means the period during which the Labor Organization seeks recognition as the collective bargaining representative of the Employees.

"Economic Action" means concerted action initiated or conducted by a Labor Organization, or Employees acting in concert with a Labor Organization, at the Employees' worksite, to bring economic pressure to bear on an Employer, as part of a campaign to organize Employees or prospective Employees of that Employer, or in attempting to secure a First Contract, if applicable. "Economic Action" includes such activities as striking, picketing, or boycotting. "Economic Action" does not include a lawsuit to enforce this Chapter.

"Employee" means anyone performing work for an Employer for compensation relating to Hospitality Operations on a full-time, part-time, seasonal, or temporary basis,

including those made available to work for the Employer through a temporary service, staffing agency, or similar agency.

“Employer” means any person or entity, including a subcontractor, with Employees engaged in Hospitality Operations.

“Hospitality Operations Lease” means a lease, sublease, license, sublicense, or other means of granting the right to a Hospitality Operation to use Marina Zone property, in which the City receives rent, a flat fee, or a charge. An “Hospitality Operations Lease” must be for a term of at least 12 months.

“Hospitality Operation” shall mean any hotel or motel operation, conference center, restaurant, bar, or other food and beverage service operation meeting the criteria specified in Section 2.102.050.

“Hospitality Operations” means any work done by Employees at or relating to a Hospitality Operation under a Hospitality Operation Lease.

“First Contract” means the first enforceable contract entered into between an Employer and a Labor Organization setting one or more terms or conditions of employment.

“First Contract Period” means, if a Labor Organization is recognized as the collective bargaining representative of Employees, the period between such recognition and execution of a First Contract.

“Labor Organization” means any organization of any kind, or any agency or employee representation committee, in which Employees participate and which exists for the purpose, in whole or part, of dealing with Employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of employment.

“Labor Peace Agreement” shall mean a binding and enforceable agreement with any Employer and a Labor Organization that represents or seeks to represent Hospitality Operations workers, as described more fully in Section 2.102.040.

“Marina Zone” shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

“Proprietary Interest” means any nonregulatory arrangement or circumstance in which the City has a financial or other nonregulatory interest including any of the following:

- (1) through a lease of real property that is owned by the City and used for the Hospitality Operation, the City receives ongoing revenue, excluding government fees, tax revenue, or assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in paragraphs (2) and (3) of this subsection;
- (2) the City receives ongoing revenue from the Hospitality Operation to repay loans provided by the City to assist in the development or operation of the project;
- (3) the City receives ongoing revenue from the Hospitality Operation to pay debt service on bonds provided by the City to assist in the development of the project;
- (4) the City has assets at risk because it has agreed to underwrite or guarantee the development of the hospitality operation or loans related to the hospitality operation; or
- (5) the City has an ongoing economic and non-regulatory interest at risk in the financial success of a Hospitality Operation which is likely to be adversely affected by labor-management conflict, except that no interest shall be considered economic and non-

regulatory if it arises from the exercise of regulatory or police powers such as taxation (except as set forth in paragraphs (2) and (3) of this subsection), zoning, or the issuance of permits or licenses.

“Parties” means an Employer and Labor Organization that has requested to be, or has been, recognized as the collective bargaining representative of Employees.

“Pre-existing Lease” means any Hospitality Operation Lease entered into before the effective date of this Chapter.

“Subcontract” means any agreement between the authorized tenant, licensee, or other user under a Hospitality Operation Lease and another person or entity that contemplates or permits that other person or entity to operate or manage all or a portion of the Hospitality Operations.

“Subcontractor” means the person or entity that operates or manages all or a portion of Hospitality Operations under a Subcontract.

“Substantial Amendment” means an amendment to, or the City’s discretionary renewal or extension of:

(1) A lease of Marina Zone property entered into before the effective date of this Chapter that did not include Hospitality Operations but is expanded to include Hospitality Operations; or

(2) A Pre-existing Lease that provides for, or permits, any of the following:

(i) A new term that extends the duration of the lease beyond that provided in the Pre-existing Lease;

(ii) The right to construct improvements to support or serve Hospitality Operations, if not previously allowed under the Pre-existing Lease;

(iii) Rent credits or potential rent credits to a Marina Zone Hospitality Operation tenant that may be applied against 25% or more of the fixed rent under the Pre-existing Lease during the period in which the rent credits may be used; or

(iv) Rent credits or potential rent credits to a Marina Zone Hospitality Operation tenant that may be applied against 50% or more of the remaining percentage or participation rent (not including any portion of the rent), if any, under the Pre-existing Lease during the period in which the rent credits may be used.

### **2.102.030 City of Berkeley—Labor Peace Policy**

A. The City shall not execute Hospitality Operations Lease or Substantial Amendment providing for the use, development, or operation of a Hospitality Operation within the Marina Zone in which the City has a proprietary interest, unless and until the project applicant, developer, or owner, and any operator or manager of the Hospitality Operation has provided evidence that it has entered into a Labor Peace Agreement covering the Hospitality Operations as specified pursuant to Section 2.102.040.

B. Each such Hospitality Operations Lease or other contract or agreement shall further require that any future Subcontractor, tenant, sub-lessee, or manager that operates the Hospitality Operation shall be required to enter into a Labor Peace Agreement as specified under Section 2.102.040.

C. The City shall make these requirements express components of any request for proposal, request for qualifications, or other similar solicitation for a Hospitality Operation projects.

### **2.102.040 Procedures to Minimize Disruption Caused by Labor/Management Conflict.**

A. An Employer who receives a written request by a Labor Organization to enter into a Labor Peace Agreement shall:

- (1) Inform the City Manager, within five business days of receiving the request, that a Labor Organization seeking to represent its Employees has requested the Employer to enter into a Labor Peace Agreement required by this Chapter;
- (2) Enter into a Labor Peace Agreement, with the Labor Organization as to the Employees it seeks to represent, containing the following provisions:
  - (i) The Labor Organization, on behalf of itself and its members, in exchange for good and valuable consideration agrees not to engage in Economic Action against the Employer during the Demand for Recognition Period, and should the Labor Organization be recognized, the First Contract Period;
- (3) Upon the City Manager's request, promptly provide to the City Manager a report attesting to the status of the Employer's compliance with the requirements of this Section 2.102.040, including a statement by any Labor Organization that has requested that the Employer enter into a Labor Peace Agreement certifying the accuracy of the Employer's report; and
- (4) Include as a material term in any Subcontract a provision requiring the Subcontractor(s) to comply with this Chapter. This provision shall be a material and mandatory term of such Subcontract, and shall state: "Berkeley Municipal Code Chapter 2, commencing at Section 2.102.040, which applies to [Subcontractor], incorporated herein by reference. To the extent [Subcontractor] employs Employees in Hospitality Operations within the scope of Berkeley Municipal Code 2.102.040, [Subcontractor] hereby agrees as a material condition of this subcontract to enter into and abide by a Labor Peace Agreement with a Labor Organization or Organizations that represents, or seeks to represent, [Subcontractor's] Employees, if and as required by Chapter 2, and to otherwise fully comply with the requirements of that Chapter."

B. In the event that an Employer is unable to agree to terms of a Labor Peace Agreement with a Labor Organization within thirty (30) days of a written request by a labor Organization for a Labor Peace Agreement, the Employer may file a request with the Berkeley City Council to be excused from such obligations with respect to that Labor Organization. A public hearing shall be held by the City Council on the Employer's request for hearing. Notice of the public hearing shall be sent at least ten days before the public hearing date to the requesting Employer and the subject Labor Organization. The hearing shall be conducted in the same manner as public hearings for land use, zoning, landmarks, and public nuisance matters. The Council may approve a request by the Employer to be relieved of and excused from its obligations under this Section 2.102.040(A) with respect to the subject Labor Organization if the Council finds, after holding the noticed hearing, that forcing the Employer to adhere to the requirements of this Section 2.102.040(A) would be detrimental to the City's Proprietary Interests because: a. the Employer has attempted in good faith to reach a Labor Peace Agreement with the subject Labor Organization, and b. the Labor Organization has (i) refused to negotiate in good faith to reach a Labor Peace Agreement or (ii) placed condition(s) on Labor Peace Agreement that are arbitrary and capricious, in light of practices at other, similar venues that are subject to governmental labor peace requirements.

C. The City Manager shall include in every Hospitality Operation Lease a provision requiring the tenant, and any Employers operating under the Hospitality Operation Lease, to comply with the requirements of this Chapter and all other applicable laws.

**2.102.050 Applicability and Exemptions.**

A. This Chapter shall not apply to any Employer that does not employ employees in a Hospitality Operation. The City Manager shall determine the applicability of an exemption under this subsection A. on a case-by-case basis. Any Employer claiming an exemption must submit a written request, including the evidentiary basis for the exemption, to the City Manager within five business days of receiving a request to enter into a Labor Peace Agreement. The Employer shall have the burden of proving that an exemption is applicable.

B. This Chapter shall not apply to an Employer if:

(1) The City has no Proprietary Interest in the Hospitality Operation Lease under which the Employer operates a Hospitality Operation, or a Hospitality Operation Lease in which the City's cumulative investment, or the present value of its expected revenues, is less than \$100,000;

(2) The Employer operates under a Pre-existing Lease. This exemption applies to an Employer for the duration of such Pre-existing Lease unless the Pre-Existing Lease is subject to a Substantial Amendment after the effective date of this Ordinance;

(3) The Employer is a signatory to valid and binding collective bargaining agreement(s) covering all of its Employees at the Marina Zone property;

(4) The Employer is a governmental agency, and the law would prohibit application of this Chapter;

C. Nothing in this Ordinance shall require or compel an employee to be a member of any labor organization, nor shall it require the developer, operator or any tenant, subcontractor, or sub-tenant of a Hospitality Operation to recognize a labor organization as the bargaining representative for its employees or to enter into a collective bargaining agreement with any labor organization.

**2.102.060 Prospective Effect.**

This Chapter is intended to have prospective effect only. This Chapter shall be interpreted to avoid violating any laws that prevent the City from impairing obligations under any Pre-existing Lease.

**2.102.070 Preemption.**

Nothing in this Chapter shall be interpreted or applied so as to create any right, power, or duty in conflict with any Federal or State law.

**2.102.080 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR

March 21, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison (Author), Mayor Arreguín (Co-sponsor), Councilmember Taplin (Co-sponsor) and Councilmember Bartlett (Co-sponsor)

Subject: Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code to Establish a Labor Peace Policy Minimizing Labor/Management Conflict in Berkeley Marina Zone

RECOMMENDATION:

Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code (BMC) to Establish a Labor Peace Policy minimizing labor/management conflict in Berkeley Marina Zone.

CURRENT SITUATION AND RATIONALE FOR RECOMMENDATION

The City of Berkeley owns a number of recreational, hospitality and food services properties in the Berkeley Marina and Waterfront. In maintaining these properties, the City has multiple interests, including providing superior facilities for residents and visitors, generating steady income from rents and fees supporting operations, supporting a harmonious labor and business environment, and supporting the Marina Fund.

The City is in the process of finalizing an exclusive negotiation agreement for former HS Lordships Restaurant property located at 199 Seawall Dr, Berkeley, CA 94710. It is in the public interest to avoid high profile and disruptive labor disputes that may arise between tenants, businesses, workers, and labor groups associated with this property and other properties in the Marina Zone.

In recent years, throughout the state of California and elsewhere in the United States, there has been an increase in labor disputes in the hospitality industry. In 2018 workers at HS Lordships restaurant walked out in the middle of brunch in protest of the severance offered by HS Lordships owners. Last year, workers at the DoubleTree Hotel joined nationwide protests to draw attention to the fact that they have been working without a contract since 2018 and their desire for better pay and healthcare benefits.

Through adopting a Labor Peace Agreement requirement for businesses operating in the Marina, Berkeley can protect its proprietary interest by preventing service and revenue disruptions while simultaneously facilitating a policy that has contributed to mutually beneficial relations between management and labor in other jurisdictions.

### BACKGROUND

Berkeley is a world-class tourist destination, welcoming more than a million visitors annually. The Marina, often recognized as the crown jewel of Berkeley, offers multiple parks, recreation facilities, and restaurants and hotel accommodations. The City Berkeley holds in trust pursuant to the Public Trust Tidelands grant from the State of California property along and near the City's waterfront known as the Berkeley Marina Zone, a major tourist hub and destination. The City leases its real property along and near the Marina Zone facilities to Hospitality Operation companies, and in so doing faces the same risks and liabilities as private businesses participating in management of similar facilities. As a result, the City has an ongoing proprietary interest in the management and use of that Marina real property and harbor facilities and must make prudent business decisions, as would any private business, to ensure efficient and cost-effective management of its business concerns, and to maximize public benefit and minimize risk.

The City's Marina Fund operates as an enterprise fund and therefore funds its activities outside of the general fund through fees, grants, and rents. The City has a strong interest in ensuring that operations and amenities continue to run smoothly to the benefit of residents and visitors alike.

This ordinance is intended to maximize the returns and minimize the risk to the City's proprietary interest resulting from possible conflict between employers leasing, and operating hospitality operations on City property, and labor organizations, arising out of union organizing campaigns, labor negotiations, and disruption that may be caused by such conflict. Experience of public entities and private employers demonstrates that union organizing drives and union efforts to secure representation rights and an initial collective bargaining agreement can deteriorate into protracted and acrimonious conflict. Such conflict threatens the City's proprietary interest when private employers enter into leases to use City property, and labor conflict could jeopardize base rent payments or rent payments calculated on a percentage of sales. That threat is most acute during the period when a labor organization (1) seeks to gain recognition as the collective bargaining representative for employees and (2) if recognized, seeks a first contract with the employer.

The sole purpose of this ordinance is to protect the City's proprietary interest in the hospitality operation leases. This ordinance does not favor any particular procedure for determining employee preference, or lack of preference, regarding labor organization representation, or the outcome of any such procedure; skew such procedures to favor or hinder any party; interfere with the negotiation, terms, or scope of a first contract, if applicable; or express or implement any generally applicable policy regarding private sector labor/management relations, or regulate those relations in any way.

Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code to Establish a Labor Peace Policy Minimizing Labor/Management Conflict in Berkeley Marina Zone

Other jurisdictions, including the Oakland Airport, BART, Port of San Francisco, the San Francisco International Airport (SFO), and Asilomar State Beach have all implemented Labor Peace Agreement policies at their respective properties requiring businesses to execute a Labor Peace Agreements to prevent disruptive management and labor disputes.<sup>1</sup>

Hotel Labor Peace in California State Parks and other Public Properties

**Asilomar Conference Center-** A 313-room hotel and conference center that is part of Asilomar State Beach. Workers there are members of UNITE HERE Local 483 and are covered by a collective bargaining agreement that guarantees labor peace. The [RFP in 2008](#) for a new concessionaire to operate the facility included a requirement to retain these workers, ensuring continued labor peace.



**SFO Grand Hyatt-** SFO has a labor peace policy that applies to food service as well as hotels under airport leases. The Grand Hyatt at SFO was developed in 2019 under this policy and had a labor peace agreement. Workers are members of UNITE HERE Local 2 and covered by a collective bargaining agreement.



**Bay Area Rapid Transit-** BART has a [labor peace policy](#), passed in 2021, which states that “The District shall not execute any lease, Lease Disposition and Development Agreement (LDDA), or other contract or agreement providing for the development of a Hotel Development Project in which the District has a proprietary interest, unless and until the project applicant, developer, or owner, and any operator or manager of the hotel that has been selected, has signed a Labor Peace Agreement covering any Hospitality Operations at the project.”



As illustrated by SFO Airport Commission regulations, labor peace agreements may include “card check” provisions whereby the employer agrees to a neutral procedure for determining whether employees wish to be represented by a labor organization for collective bargaining.<sup>2</sup> Under card check, a neutral third party verifies employee union cards in lieu of holding a formal election. In addition, agreements may include provisions

<sup>1</sup> [Labor Peace Agreement Policy - Port of Oakland](#); [Labor Peace Agreement Policy for Transit Oriented Development Hotel Operations](#) – BART; [Labor Peace Policy - Port of San Francisco](#); [Labor Peace/Card Check Rule](#) – SFO.

<sup>2</sup> Appendix C, Labor Peace/Card Check Rule, SFO Airport Commission, <https://www.flysfo.com/sites/default/files/media/sfo/about-sfo/2014%20R&R%20Appx%20C%20-%20Labor%20Peace-Card%20Check%20Program.pdf>.

requiring the Employer to be neutral during the organizing campaign and/or to provide access to worksites by employers.<sup>3</sup>

The proposed ordinance specifies that the City will not execute hospitality operations leases or make substantial amendments providing for the use, development, or operation of a hospitality operation within the Marina Zone in which the City has a proprietary interest, unless and until the project applicant, developer, or owner, and any operator or manager of the hospitality operation has provided evidence that it has entered into a Labor Peace Agreement. This requirement also applies to any future subcontractor, tenant, sub-lessee, or manager that operates the Hospitality Operation. The ordinance ensures that these requirements are express components of any request for proposal, request for qualifications, or other similar solicitation for a hospitality operation projects in the Marina Zone.

#### FISCAL IMPACTS OF RECOMMENDATION

City Attorney staff time will be necessary to implement the respective requirements in leases, requests for proposals, and other documents.

#### ENVIRONMENTAL SUSTAINABILITY

Not applicable.

#### CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

Attachments:

1. Draft Ordinance Adding BMC 2.102

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<sup>3</sup> *Labor Peace Agreements - U.S. Chamber.*

[https://www.uschamber.com/assets/archived/images/documents/files/labor\\_peace\\_agreements\\_2013\\_09\\_12.pdf](https://www.uschamber.com/assets/archived/images/documents/files/labor_peace_agreements_2013_09_12.pdf).

- Elmwood Business Improvement District Advisory Board
- Energy Commission
- Homeless Commission
- Housing Advisory Commission (policy)
- Human Welfare & Community Action Commission
- Loan Administration Board
- Mental Health Commission
- Open Government Commission
- Parks and Waterfront Commission
- Peace & Justice Commission
- Police Review Commission
- Public Works Commission
- Solano Avenue Business Improvement District Advisory Board
- Sugar-Sweetened Beverage Product Panel of Experts
- Transportation Commission
- Youth Commission
- Zero Waste Commission

#### D. COMMISSION PURVIEW

Every commission is created by enabling legislation, which may take the form of an ordinance or resolution. The enabling legislation defines the role, scope, and responsibilities of the commission. The enabling legislation is how the City Council assigns and defines what types of work each commission may undertake and limits on what type of recommendations each commission may make.

In order for commission recommendations to have significant meaning in the eyes of the City Council, all commissions should take special care to ensure that they remain within their subject area purview and the constraints of their enabling legislation. Occasionally two or more commissions will have overlapping subject matter. In these cases, the secretaries should work together to ensure the subject is handled by the proper commission (see Chapter III, Section C, page 38).

#### E. DEVELOPMENT OF A WORK PLAN

In 2016, the City Council took formal action directing all commissions, except Board of Library Trustees (BOLT), Design Review, and Zoning Adjustments Board (ZAB), to submit an annual work plan at the start of each fiscal year to the Council in the form of an Information Report. A commission work plan should contain the commission's mission statement, goals, resources, activities, outputs, and desired outcomes. This planning document specifies how and when the commission plans to accomplish its objectives (by specifying outcomes) during the fiscal year. Goal statements explain the nature and scope of the work to be performed and the time needed to accomplish the goal.

Designing yearly work plans or goal statements may be done in conjunction with the development of the relevant departmental work plan so that the work of the department and the commission will complement each other throughout the year.

When developing a work plan, commissions should take special care to ensure that they remain within the subject area purview of their enabling legislation.



## Chapter 3.62

### COMMISSION ON LABOR

Sections:

- 3.62.010 Establishment--Membership--Appointment.**
- 3.62.020 Appointment--Automatically terminated when--Procedures.**
- 3.62.030 Liaison representatives--From other commissions.**
- 3.62.040 Liaison representatives--To other City entities--Functions.**
- 3.62.050 President--Election and term.**
- 3.62.060 Meetings.**
- 3.62.070 Organization, quorum and record keeping.**
- 3.62.080 Functions.**
- 3.62.090 Membership--Criteria for guiding appointments.**

#### **3.62.010 Establishment--Membership--Appointment.**

A Labor Commission is established. The commission shall consist of nine members. Appointments to the commission shall be made by councilmembers, and vacancies on the commission shall be filled by councilmembers in accordance with the provisions of Sections [2.04.030](#) through [2.04.130](#) of this code. (Ord. 5699-NS § 1 (part), 1986)

#### **3.62.020 Appointment--Automatically terminated when--Procedures.**

Commissioners shall adhere to the attendance rules and commission secretaries and the City Clerk shall adhere to the termination procedures as set forth in BMC Section [3.02.020](#) and the City of Berkeley Commissioners' Manual. (Ord. 6897-NS § 1, 2006; Ord. 5699-NS § 1 (part), 1986)

#### **3.62.030 Liaison representatives--From other commissions.**

Members of any appropriate commission or commissions shall act as liaison representatives between the Labor Commission and the commission of which they are members. Such liaison representatives shall serve for a period of one year and shall have no power to vote. (Ord. 5699-NS § 1 (part), 1986)

### **3.62.040 Liaison representatives--To other City entities--Functions.**

Subject to the approval of the council in each case, the commission may designate one of its members to act as a liaison representative to any other board, commission or committee of the City. The functions of such liaison representatives are to attend meetings of other boards, commissions, or committees; advise this commission of the background, attitudes and reasons behind the actions of such other boards, commissions or committees; and on request of any member of such other board, commission or committee, to advise such other board, commission or committee of policy, procedures and decisions of this commission that may bear upon matters under discussion by such other board, commission or committee. Such liaison representatives shall have no power to vote. (Ord. 5699-NS § 1 (part), 1986)

### **3.62.050 President--Election and term.**

The Labor Commission shall elect one of its members chair, and one member vice-chair, who shall hold office for one year and until their successors are elected, unless their term as a member of the commission expires sooner. (Ord. 6897-NS § 2, 2006: Ord. 5699-NS § 1 (part), 1986)

### **3.62.060 Meetings.**

The commission shall establish a regular place and time for meeting. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. The frequency of meetings shall be as determined by City Council resolution. The scheduling of special meetings in addition to those established by City Council resolution, except special meetings that take the place of cancelled regular meetings, shall be subject to approval by the City Council. A request for a special meeting shall include the reason for the proposed meeting and should be expedited on the City Council's agenda, or in the alternative, placed before the Agenda Committee for approval. (Ord. 6897-NS § 3, 2006: Ord. 5699-NS § 1 (part), 1986)

### **3.62.070 Organization, quorum and record keeping.**

- A. The commission may make and alter all rules and regulations governing its organization and procedures not inconsistent with this chapter or with any other ordinance of the City.
- B. A majority of the members in office shall constitute a quorum for the transaction of business and shall be required to take any action. The commission shall keep an accurate record of its proceedings and transactions and shall submit an annual report to the City Council and to the City Manager. (Ord. 5699-NS § 1 (part), 1986)

### **3.62.080 Functions.**

- A. Research: Preparation of an annual report about the conditions and demographics of labor in Berkeley.

- B. Labor bill of rights: Preparation and submission of a policy document for endorsement by the City Council. This document would summarize a person's right to have a job and their on-the-job rights. This commission would urge observance of the Labor Bill of Rights. (Note: this document would be similar to the United Nations Bill of Rights for Workers.)
- C. Education: Preparation of public information about the conditions and rights of labor in Berkeley; creation of a pro-labor image in the public opinion; recommendation of materials and representative speakers on labor to the school board and other government and community agencies and institutions; and encouragement of training, re-training, skill up-grading and apprenticeship programs through cooperation with unions and the labor commission.
- D. Labor reports: Preparation of reports of the impact on the work force and the community of new and current businesses as a means of informing the public, the City Council, and City boards and commissions, with special attention to urging such businesses to observe the Labor Bill of Rights.
- E. Labor disputes: Observing and reviewing picketing, strikes, and any role of the City of Berkeley in these disputes and reporting back to City Council; and encouraging support for officially sanctioned boycotts. Municipal employees' labor disputes and contract provisions are not within the purview of the Labor Commission.
- F. Information service:
1. Develop information and referral services for Berkeley workers, residents, and employers with regard to appropriate state, federal, and private agencies and labor organizations.
  2. Promotion of harmonious work environment: To provide a variety of information leading to a range of solutions to improved work place relationships including referrals to mediation; increased worker input; profit sharing; worker ownership (cooperatives); worker self management; and unionization.
- G. Equal rights: Promote affirmative action, comparable worth, a living wage, and the right to a job. This includes promoting policies which would improve job opportunities for minorities, women, students, gays and lesbians, and the disabled. Develop information and referral services on job listings, training and apprentice programs. (Ord. 5699-NS § 1 (part), 1986)

### **3.62.090 Membership--Criteria for guiding appointments.**

- A. One member of the Commission on Labor shall be appointed by each City Councilmember, in accordance with Ordinance No. 4780-N.S.
- B. The following desirable criteria may guide, but not restrict, councilmembers in making appointments:
1. Membership in labor organizations.
  2. Membership to reflect affirmative action guidelines. (Ord. 5699-NS § 1 (part), 1986)



**The Berkeley Municipal Code is current through Ordinance 7838-NS, passed November 3, 2022.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Code Publishing Company](#)

Commission on Labor  
 FY 2023 Work Plan (Effective July 1, 2022 to June 30, 2023)

Research and gather information to report to City Council and support Commission's recommendations to City Council:

- a. Invite speakers to present relevant and current information regarding labor issues including approaches to addressing potential labor shortages.
- b. Develop policies for recommendation to City Council in formal coordination with other City of Berkeley commissions to maximize the availability of subject matter experts and identify connections between labor and other relevant issues including, but not limited to, economic development and human rights.
- c. Examine City's policies and practices regarding workplace sexual harassment.
- d. Examine the University of California at Berkeley's policies and practices regarding workplace sexual harassment.

Labor bill of rights:

- a. Review and update the Labor Bill of Rights and submit recommended revisions to City Council.

Education:

- a. Facilitate education of workers in Berkeley about their rights and the process for addressing workplace sexual harassment.
- b. Facilitate education of children and young adults in Berkeley about the benefits and opportunities of organized labor.

Local labor disputes:

- a. Monitor on-going and new labor disputes
- b. Hold public hearings on labor disputes as requested/required
- c. Submit recommendations to Council based on information gathered from both sides of disputing parties.

Revised draft presented to Commission during 11.17.21 meeting, based on actions from Commission during 1.19.22.  
 "a.(M/S/C: M/Schriner Move to adopt the workplan with the one revision to remove Fair Workweek (done)/Second Harlow" – Joshua Oehler, Community Services Specialist III – 11.21.22



[Commission Name]

## INFORMATION CALENDAR

[Meeting Date (Month Day, yyyy)]

To: Honorable Mayor and Members of the City Council

From: [Commission Name]

Submitted by: [Name of Commission Chairperson], Chairperson, [Commission]

Subject: [Click **Here** and Type the Title. (No underline and not all caps.)]

### INTRODUCTION

**SUMMARY** *[This section, included only if report exceeds three pages, replaces the introductory paragraph described above.]*

### CURRENT SITUATION AND ITS EFFECTS

*For items that relate to one of the Strategic Plan goals, include a standard sentence in the Current Situation and Effects or Background section:*

[Insert project name] is a Strategic Plan Priority Project, advancing our goal to [pick one:]

- provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.
- provide an efficient and financially-health City government.
- foster a dynamic, sustainable, and locally-based economy.
- create affordable housing and housing support service for our most vulnerable community members.
- create a resilient, safe, connected, and prepared city.
- champion and demonstrate social and racial equity.
- be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.
- be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.
- attract and retain a talented and diverse City government workforce.

### BACKGROUND

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

*For reports related to climate, include a Just Transition from fossil fuels analysis wherein maximum potential for reducing greenhouse gas emissions while advancing equity is evaluated.*

POSSIBLE FUTURE ACTION

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

CONTACT PERSON

[Name], [Title], [Department], [Phone Number]

Attachments: [Delete if there are NO Attachments]

1: Resolution and/or Ordinance

    Exhibit A: [Title or Description of Exhibit]

    Exhibit B: [Title or Description of Exhibit]

2: [Title or Description of Attachment]

3: [Title or Description of Attachment]